

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)
MONSANTO TECHNOLOGY LLC,)
)
Plaintiffs,)
)
vs.)
)
E.I. DUPONT DE NEMOURS AND) Case No. 4:09-cv-00686-ERW
COMPANY and)
PIONEER HI-BRED INTERNATIONAL,)
INC.,)
)
Defendants.)

MONSANTO'S FIRST MOTION TO COMPEL

Plaintiffs Monsanto Company and Monsanto Technology LLC (collectively "Monsanto") respectfully move the Court for an order compelling Defendants to produce certain documents in response to Monsanto's discovery requests. Those documents fall into the following four categories:

- Documents related to Defendants' ***stacked corn products*** (*see* Monsanto's 1st Set of Requests for Production of Documents (Apr. 16, 2010), Request Nos. 4, 6, 12, 13, 34-35, 42-43, 47, 49-50, 56-59, 61-63, 66, 70-71, 196);
- Documents related to Defendants' ***infringing seeds and pedigree information*** (*see* Monsanto's 2d Set of Requests for Production of Documents (June 10, 2010), Request Nos. 1-4);
- ***Domestic and foreign regulatory filings*** made for Defendants' accused products and communications relating to those filings (*see* Monsanto's 1st Set of Requests for Production of Documents (Apr. 16, 2010), Request Nos. 70-71); and
- Documents relating to Defendants' ***OGAT corn and soybean products*** (*see* Monsanto's 1st Set of Requests for Production of Documents (Apr. 16, 2010), Request Nos. 14, 46, 49-50, 60-61, 64-67, 69, 70-75, 78-80, 83-84, 172-173, 196-198, 201, 206).

Monsanto incorporates by reference its memorandum in support as if fully stated herein.

Pursuant to Local Rule 37-3.04, counsel for the parties have met and conferred on several occasions in a good faith attempt to resolve their discovery disputes as follows:

1. With the exception of the infringing seeds and pedigree information, Monsanto raised all of the disputes addressed in this motion months ago in numerous letters and during two meet-and-confer sessions held on June 16, 2010 and August 24, 2010. Defendants' counsel Amy Mauser and Thomas Fleming, among others, participated in both of those meet-and-confer sessions and were recipients of correspondence stating Monsanto's position on the issues. *See, e.g.*, 06/25/10 Letter from J. Rosenthal to A. Mauser (Ex. A); 7/12/10 Letter from J. Rosenthal to A. Mauser (Ex. B); 09/09/10 Letter from J. Rosenthal to T. Fleming and A. Mauser (Ex. C). Despite their efforts, the parties were unable to resolve their discovery disputes.

2. With respect to the infringing seeds and pedigree information, Monsanto sent Defendants a letter on August 18, 2010 setting forth Monsanto's concerns with Defendants' refusal to produce this information. *See* 08/18/10 Letter from J. Hilmert to T. Fleming and A. Mauser (Ex. D). Having received no response, Monsanto sent a second letter on September 28, 2010. *See* 09/28/10 Letter from J. Hilmert to T. Fleming (Ex. E). On October 1, 2010, Defendants responded, but refused to produce the requested information. *See* 10/01/10 Letter from T. Fleming to J. Hilmert (Ex. F). Throughout the week of October 11, 2010, the parties made numerous attempts to meet and confer on this issue, and on October 14, 2010, Gail Standish on behalf of Monsanto and Thomas Fleming on behalf of Defendants discussed the parties' respective positions but were unable to reach resolution.

WHEREFORE, Monsanto respectfully moves the Court for an Order compelling Defendants to produce documents in response to Monsanto's discovery requests identified in this motion within 10 days of the Court's Order.

Dated: October 15, 2010

Respectfully submitted,

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By: /s/ Joseph P. Conran.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of October, 2010, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern Division, and was served by operation of that Court's electronic filing system, upon the following:

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